

EXHIBIT G

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ARGENT CLASSIC
CONVERTIBLE ARBITRAGE
FUND L.P., individually and on
behalf of all others similarly situated,

Plaintiff,

v.

COUNTRYWIDE FINANCIAL
CORPORATION, et al.,

Defendants.

Case No. CV 07-07097 MRP (MANx)

**DEFENDANT BANK OF AMERICA
CORPORATION'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS THE THIRD
AMENDED CLASS ACTION
COMPLAINT**

Date: March 16, 2009

Time: 10:00 a.m.

Courtroom: 12

Judge: The Hon. Mariana R. Pfaelzer

1 In its Third Amended Complaint (“TAC”) in this action, Plaintiff for the first
2 time named Bank of America Corporation as a defendant without alleging any BAC
3 act or conduct to support the claims against it. There is therefore no basis for
4 naming BAC in this case, and the TAC must be dismissed as to BAC with prejudice
5 as a matter of law.¹

ARGUMENT

BAC is not the issuer of the Debentures that are the subject of this case. Nor does the Complaint contain a single allegation of BAC wrongdoing. Even though Federal Rule 9(b) and the Private Securities Litigation Reform Act require the complaint to allege with particularity each defendant’s role in the alleged fraud, the TAC does not allege a single allegedly actionable misstatement by BAC, any BAC role whatsoever in Countrywide Financial Corporation’s (“Countrywide”) alleged misconduct, or any other BAC act or conduct that allegedly violated the federal securities laws or state law. Rather—by Plaintiff’s explicit admission—BAC “is sued herein in its capacity as the parent and successor-in-interest to Countrywide.” TAC ¶ 24. Yet the TAC itself also concedes that the transaction through which BAC became Countrywide’s parent corporation (the “Acquisition”) closed in July 2008, many months after Countrywide’s supposed fraud had allegedly come to light and the putative class period’s November 27, 2007 end date. *See id.*

20 Plaintiff now seeks to hold BAC liable for Countrywide's alleged pre-Merger
21 wrongdoing because it acquired Countrywide in a transaction in which
22 Countrywide merged into a BAC subsidiary. Apart from allegations concerning the
23 merger and a passing reference to BAC's relationship to Banc of America
24 Securities, LLC,² the TAC is silent as to BAC. As a matter of law, however,

²⁵ In addition to the reasons for dismissal addressed in this memorandum, BAC also
²⁶ joins in and incorporates herein by reference the additional arguments for dismissal
²⁷ set forth in the motions to dismiss and supporting memoranda of law filed by
²⁸ Countrywide Financial Corporation and by the Individual Defendants. Unless
otherwise specified, capitalized terms shall have the meaning ascribed to them in
those motions.

²⁸ The TAC alleges that BAC is the “parent corporation of Bank of America

1 Countrywide's July 1, 2008 merger into a BAC subsidiary provides no basis
 2 whatsoever for naming BAC, particularly in a purported class action where the
 3 proposed class period ends seven months earlier.

4 “[A] parent is not liable for the [allegedly] wrongful conduct of its subsidiary
 5 simply because the parent wholly-owns the subsidiary.” *Bell Atlantic Bus. Sys. v.
 6 Hitachi Data Sys. Corp.*, 1995 WL 32864, at *4 (N.D. Cal. Jan. 23, 1995). As the
 7 district court in *Winner Chevrolet, Inc. v. Universal Underwriters Ins. Co.*, 2008
 8 WL 2693741 (E.D. Cal. July 1, 2008), observed, this principle is “deeply ingrained
 9 in our economic and legal systems.” *Id.* at *2 (citing *United States v. Bestfoods*,
 10 524 U.S. 51, 61 (1998)); *accord Chill v. General Elec. Co.*, 101 F.3d 263, 268 (2d
 11 Cir.1996) (dismissing securities fraud claims against parent corporation; “whether a
 12 subsidiary defrauded plaintiffs and whether its parent . . . defrauded plaintiffs are
 13 different questions”).

14 *In re McKesson HBOC, Inc. Sec. Litig.*, 126 F. Supp.2d 1248, 1277 (N.D.
 15 Cal. 2000), illustrates this principle. In a transaction structured like the BAC’s
 16 Countrywide acquisition, HBO & Company (“HBOC”) merged into a wholly-
 17 owned McKesson subsidiary. *Id.* at 1276-77. Following the merger’s closing,
 18 McKesson restated its historic financial results after it discovered that pre-merger
 19 HBOC had improperly booked contingent transactions as sales. Plaintiff sued
 20 HBOC for violating Securities Exchange Act Section 10(b) and Rule 10b-5 and also
 21 named McKesson based on, among other things, the allegation that McKesson was
 22 HBOC’s parent and “successor.” *Id.* at 1276. Rejecting the very same argument
 23 Plaintiff appears to be making here, the district court held that “[a] parent is not
 24 vicariously liable for the [alleged] securities fraud of its subsidiary.” *Id.* Rather,

25
 26 Securities, LLC” (“BAS”), which was allegedly part of the “joint book running
 27 syndicate” that sold the Countrywide debentures at issue in this case and
 28 purportedly a “market maker” for the Debentures. TAC ¶ 25. But the TAC does
 not even name BAS or any of the other alleged joint bookrunning syndicate
 members, nor does the TAC allege that BAC did anything improper (let alone
 engaged in any wrongdoing) as result of its ownership of BAS.

1 the district court stated that plaintiff was required to allege a securities law violation
 2 by McKesson itself in order to name it as a defendant in the case. *Id.* (citing *Chill*
 3 *v. General Elec. Co.*, 101 F.3d 263, 268 (2d Cir.1996)); *see also Morgan v. Power*
 4 *Timber Co.*, 367 F. Supp. 2d 1032, 1035 (S.D. Miss. 2005) (observing that the
 5 “applicable law is clear that a parent corporation is not responsible for the pre-
 6 acquisition liabilities of its wholly-owned subsidiary”) (internal quotations
 7 omitted); *Binder v. Bristol-Myers Squibb, Co.*, 184 F. Supp. 2d 762, 768-69 (N.D.
 8 Ill. 2001) (finding a parent corporation not liable for its subsidiary’s premerger
 9 acts).

10 Like the acquiring corporation in *McKesson*, BAC has no potential liability
 11 here for the supposed securities law violations of another corporation that allegedly
 12 occurred many months before BAC’s acquisition. Because Plaintiff has not alleged
 13 any securities law violation or other misconduct whatsoever that would provide a
 14 basis for naming BAC in this case, the TAC must be dismissed against BAC with
 15 prejudice as a matter of law.

16 In any event, the TAC is defective as a matter of law and should be dismissed
 17 for the reasons in the Countrywide Financial Corporation and the Individual
 18 Defendants’ motions to dismiss the Third Amended Complaint, which BAC joins.

19 Dated: January 6, 2009

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22 By: /s/ Seth Aronson

23 Seth Aronson
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 24 Bank of America Corporation

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